Why we should be bothered about…#2

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Juryless Rape Trials

In March 2021 the report was published of a review chaired by Scotland's second most senior judge, Lady Dorrian. Titled Improving the Management of Sexual Offence Cases[1], it aims to be an attempt to "improve the experience of complainers within the Scottish court system without compromising the rights of the accused"[2]. Amongst the proposals for achieving this, the most radical by far is the setting up of a pilot scheme for juryless trials in rape cases. This project would

Recently the Lord Advocate Dorothy Bain QC herself backed this idea[3]. The present Lord Advocate was appointed by First Minister Nicola Sturgeon in June 2021 and as such sits in the Scottish government cabinet to provide legal advice. The Lord Advocate is also the chief public prosecutor in Scotland and heads the Crown Office and Procurator Fiscal Service (COPFS). There is a body of opinion that regards the linking of these roles as unsustainable, and unhealthy in a modern democracy. Indeed, her predecessor, James Wolffe, was dogged by controversies during his time in office. The dual position leaves the appointee ostensibly vulnerable to institutional pressure.

One of the justifications offered for taking away jury requirement is that it would provide a solution to the huge backlog of untried cases, of which sexual assault crimes constitute the largest proportion. Indeed, this ever-increasing backlog is impacting disproportionately on women's lives, their health and their wellbeing.

Not all those in the legal profession go along with this proposal. Thomas Ross QC says "knocking a day or two off the length of a rape trial is unlikely to have much impact upon the daunting backlog that Crown Office and the Scottish courts are facing".

Mr Ross did agree that: "radical" solutions were needed to resolve the backlog and suggested that certain drugs cases could be resolved earlier. Ms Bain has previously expressed enthusiasm about treating drug abuse as a health problem, rather than simply a legal one.[4]

More funding of court systems and more staff, along with reorganisation of the ways juries are selected might be helpful too in dealing with this pressing problem.

There is widespread concern in Scotland about the small number of rape cases which ever actually get to court in the first place and the low conviction rates among those which do. However, it is seen as a drastic step to do away with juries, even as a pilot scheme, before addressing other causes of this: a complainer's fear of not being guaranteed a female practitioner for the forensic examination; the worry of being seen by male-bodied counsellors self-identifying as females; the perception by victims of an unwillingness of police officers to investigate in depth and for any length of time; the way legal teams conduct their defences.

To her credit, the Lord Advocate has just announced a review into how prosecutors deal with reports of sexual offences. At the same time, COPFS is set to review its Victim Information and Advice Service. It is to be hoped any recommendations forthcoming are robust and implemented expeditiously.

from a person still wearing court dress adopted centuries ago. Certainly not every member of a jury comes into this category and it is very difficult to assess how much this could skew the result. Demonstrably myths attach to other categories of crimes too. and it is not seemly for these senior judges to single out juries in rape trials. Public information campaigns might be a worthwhile use of government funds to enlighten and educate.

Comprehensive studies/papers[5] which were produced in 2019 found some evidence of these beliefs in trial reconstructions. Since then, due to the publicity of some very high profile cases and public awareness of the Me too movement, one could expect a societal change in the understanding of such cases i.e. a reduction of beliefs in so-called "rape myths". Even more so in Scotland. There is today more awareness of how rape and assault victims react, and more empathy with their psychological trauma. The necessity of looking from the female viewpoint has also become more expected. Directions from the judge before a jury deliberates could also go some way to correcting these "myths".

There is no doubt that an improvement in the management of sexual assault cases is necessary – from the manner in which they are investigated, the methods of gathering facts and evidence, how seriously they are taken, through the large number of cases COPFS neglects to pursue in court, to the way defence lawyers are allowed to present their cases and lead circumstantial details eg what type of clothes the victim was wearing or previous sexual behaviour. These should be all be dealt with before embarking on juryless trials.

In Scotland we do not have a right to be tried by a jury but we expect to be tried by our peers and it is a convention in most modern democracies. Juries bring a variety of skills, experience, and points of view to the proceedings whereas an appointed judge is dependent on whoever made the appointment, a decision which could itself be prejudiced. Juries act as a brake on totalitarian and dictatorial regimes. Judges aren't invulnerable to institutional pressure nor immune from being swayed by populist opinion either.

[1]https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/Improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6

[2]https://www.uofgschooloflaw.com/blog/2021/3/18/the-dorrian-review-and-juries-in-rape-cases-myths-about-myths

[3]https://pbs.twimg.com/media/FHSewpKXsAQbtH8?format=jpg&name=large

[4]https://www.scottishlegal.com/article/authoritarian-nightmare-of-juryless-trials-moves-a-step-closer-with-lord-advocate-s-endorsement

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About Us

Yes East Ayrshire was formed in 2012 ahead of the Referendum for Scottish Independence in 2014 by a handful of dedicated activists who firmly believed in Scotland's ability to govern itself, with all powers held at our Scottish Parliament in Holyrood.

The team grew and grew and a few months before 18th September 2014, the day of the referendum, had became one of the largest Yes teams in the country, featuring regularly on newsreels and with people from all walks of life dedicating thousands of hours, wearing out shoes, literally street and door campaigning for Scotland!

The result was of course disappointing, with 52.42% voting to remain in the uk, although over the course of the campaign support in East Ayrshire rose from around 24% in the polls to 47.22% on the day. We are here to build on that huge result. With the expectation that a new campaign will be announced in the next few months, and the level of support from 2014 as our starting point, it's a short climb, all hands on deck, for us to be Yes, East Ayrshire!

In December 2017, we moved our campaign space in Kilmarnock – to 31c Titchfield Street, on the site of what was previously the SNP Shop, a few doors down from our MP Alan Brown's Constituency Office. The shop has hosted many very popular events, been used to promote national and local Scottish Independence events, to sell Independence-related merchandise and is entirely funded by supporters and members and staffed by volunteers who are on hand from 10am to 4pm, Monday to Friday (at present) to assist with any questions voters might have about what our future Independent Scotland will be able to achieve, and the progress we can expect, once we have gained back all our powers and hold on to all our taxes currently sent to Westminster, to spend in Scotland – like pretty much every other country in the world!

We're keen to have new volunteers in the shop, for people to bring their ideas on how best we can send our message out to the people of East Ayrshire from Waterside to Lugar, from Cumnock to Stewarton, Kilmarnock and Dalmellington and beyond! For more information – message our FB, Instagram or Twitter @YesEastAyrshire pages or email us: yeseastayrshire@gmail.com. We have a membership fee of £20 per household, £12 per waged person, £6 per unwaged – members get first chance to book seats at our events as well as a discount on our merchandise.

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